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IN THE
COURT OF APPEALS OF INDIANA

ALEXANDER J. ANGLEMYER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 43A03-0609-CR-438
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE KOSCIUSKO CIRCUIT COURT
The Honorable Rex L. Reed, Judge
Cause No. 43C01-0509-FA-217

March 22, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Alexander Anglemyer (Anglemyer), appeals his sentence following his conviction of battery causing serious bodily injury, a Class C felony, Ind. Code § 35-42-2-1.

We affirm.

ISSUES

Anglemyer raises three issues on appeal, which we restate as the following two issues:

(1) Whether the trial court properly sentenced Anglemyer; and

(2) Whether the trial court properly ordered Anglemyer to pay restitution.

FACTS AND PROCEDURAL HISTORY

On August 8, 2005, Anglemyer, nineteen years old, entered the home of his friend, Wayne Chalstrom (Chalstrom), in Kosciusko County, Indiana, and struck him in the head with his fist. As a result, Chalstrom suffered three skull fractures and required surgery where several metal plates were inserted into his head. On September 7, 2005, the State filed an Information charging Anglemyer with Count I, battery causing seriously bodily injury, a Class C felony, I.C. § 35-42-2-1, and Count II, burglary, as a Class A felony, I.C. § 35-43-2-1.

On March 15, 2006, Anglemyer entered a plea agreement whereby he pled guilty to Count I in exchange for the State's dismissal of Count II. The plea agreement left sentencing to the discretion of the trial court, requiring only that the sentence be served consecutively to a sentence in another cause. On March 31, 2006, the trial court held a

sentencing hearing and found as aggravating circumstances: (1) the high degree of harm sustained by the victim; and (2) Anglemyer's criminal history, including previous juvenile infractions, as well as adult misdemeanor and felony convictions. As mitigators, the trial court identified Anglemyer's age and his plea of guilty. Concluding that the aggravators outweighed the mitigators, the trial court sentenced Anglemyer to a term of eight years in the Department of Correction, the maximum sentence for a Class C felony. In addition, the trial court entered an Order requiring Anglemyer to pay Chalstrom restitution in the amount of $32,338.52 for Chalstrom's medical costs.

On April 20, 2006, Anglemyer filed a Motion to Correct Error, challenging the trial court's finding of aggravators and mitigators, and its Order for restitution. Specifically, Anglemyer contended that restitution was improper because the hospital had been able to write off a majority of Chalstrom's medical costs. Following a hearing on the Motion to Correct Error, the trial court entered a revised restitution Order on July 25, 2006, instructing Anglemyer to pay restitution in the amounts of: $8,123.96 to Chalstrom; $1,900.76 to Kosciusko Community Hospital; and $22,313.80 to Lutheran Hospital. However, the trial court did not revise its findings as to aggravators and mitigators.

Anglemyer now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Sentencing

Anglemyer disputes his sentence of eight years in the Department of Correction. Specifically, Anglemyer contends that the trial court improperly balanced the aggravators

and mitigators in his case. In addition, Anglemyer asserts that the sentence imposed is improper in light of the nature of the offense and his character.

Anglemyer was sentenced under Indiana's new advisory sentencing scheme, which went into effect on April 25, 2005. Under this scheme, "Indiana's appellate courts can no longer *reverse* a sentence because the trial court abused its discretion by improperly finding and weighing aggravating and mitigating circumstances." *McMahon v. State*, 856 N.E.2d 743, 748-49 (Ind. Ct. App. 2006) (emphasis added). Thus, appellate review of sentences in Indiana is now limited to Appellate Rule 7(B). *Id*. As such, the burden is on the defendant to persuade this court that his or her sentence is inappropriate. *Id*. at 749. Nonetheless, an assessment of aggravating and mitigating circumstances is still relevant to our review under Rule 7(B), which provides: "The [c]ourt may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the [c]ourt finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Id. at 748-49. Therefore, in addressing Anglemyer's argument, we will consider the aggravators and mitigators identified by the trial court.

Anglemyer focuses first on his character and the trial court's failure to recognize that he obtained his G.E.D. while incarcerated, has accepted responsibility for his actions by pleading guilty, and apologized to Chalstrom. We find little or no merit in these arguments. While we applaud Anglemyer for completing his high school education, it cannot be ignored that he did so while incarcerated. The record indicates that prior to the commission of the instant crime, Anglemyer was arrested five separate times in less than a year. He has previously been convicted of one misdemeanor for maintaining a common

nuisance, one count of felony robbery, and one count of felony battery. In fact, Anglemyer was arrested in the instant case while awaiting sentencing in another cause.

With respect to remorse, we note that a trial court's determination of a defendant's remorse is similar to a determination of credibility. *Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002). Absent evidence of some impermissible consideration by the trial court, we accept its determination of credibility. *Id*. Here, at the sentencing hearing, the trial court commented, ". . . whether or not you are remorseful – that's something that only you know[,] but I'm not much persuaded by it." (Appellant's App. p. 73). Nothing in the record leads us to substitute our judgment for that of the trial court's on this issue. Accordingly, we agree that Anglemyer's eight-year sentence is appropriate in light of the nature of his character.

Next, Anglemyer claims that the nature of the offense does not warrant the maximum sentence for a Class C felony. In particular, Anglemyer stresses that there is no evidence the beating of Chalstrom was premeditated or that he "did nothing more than strike Chalstrom in the head." (Appellant's Br. p. 21). Again, we are unmoved by Anglemyer's contentions. Our review of the record demonstrates that without permission, Anglemyer entered his friend's home and seriously injured him, without any immediate provocation. Therefore, we agree with the trial court's sentencing decision in light of the nature of Anglemyer's offense as well.

II. *Restitution*

Finally, Anglemyer argues that the trial court erred in ordering him to pay restitution to Chalstrom, Kosciusko Community Hospital, and Lutheran Hospital. In

particular, Chalstrom argues that neither hospital can be defined as a "victim" under I.C. § 35-50-5-3 because both institutions were able to write off the costs of Chalstrom's medical services.

Trial courts may order a person convicted of a felony or misdemeanor to pay restitution to the victim of the crime as part of the sentence or as a condition of probation. *Little v. State*, 839 N.E.2d 807, 809 (Ind. Ct. App. 2005); *see also* I.C. § 35-50-5-3. The trial court exercises its discretion when entering an order of restitution, and we reverse only upon a finding of an abuse of that discretion. *Id*. An abuse of discretion has occurred only if no evidence or reasonable inferences therefrom support the trial court's decision. *Id*. As the restitution Order before us presents itself following a Motion to Correct Error, we note that the standard of appellate review of trial court rulings on motions to correct error is also an abuse of discretion. *Walker v. Kelley*, 819 N.E.2d 832, 836 (Ind. Ct. App. 2004).

Here, Anglemyer contends that the restitution Order entered by the trial court does not reflect the actual costs incurred by each victim. To the contrary, our review of the record shows careful consideration and reconsideration by the trial court on this issue. After the hearing on Anglemyer's Motion to Correct Error, the trial court entered a new restitution Order, parsing out the exact amounts owed to each entity. As documentation of these amounts is absent from the record given to this court, we must defer to the trial court's calculations. Furthermore, as pointed out by the State, the word "victim" in the statutes authorizing restitution has not been construed so narrowly as to limit the payment of restitution only to the person or entity actually subjected to the commission of the

crime. *See Little*, 839 N.E.2d at 810. Rather, restitution has properly been ordered payable to those shown to have suffered injury, harm, or loss as a direct result of the crime. *Id*. In our view, whether parts of the costs were "written off" by the two hospitals does not change the fact that they were not paid for their services. Accordingly, we conclude that the restitution Order stands.

CONCLUSION

Based on the foregoing, we conclude that the trial court neither sentenced Anglemyer improperly, nor erred in its restitution Order.

Affirmed.

KIRSCH, J., and FRIEDLANDER, J., concur.